

REMARKS

This responds to the Office Action mailed on July 20, 2007 and supports the Notice of Appeal to the Board of Patent Appeals and Interferences filed on October 10, 2007.

37 C.F.R 41.33 provides for amendments to the claims after the filing of a notice of appeal and prior to the date of filing of an appeal brief. The MPEP provides the following:

1206 Amendments and Affidavits or Other Evidence Filed With or After Appeal

....

I AMENDMENTS

Amendments filed after the filing of a notice of appeal, but prior to the date of filing a brief, may be admitted only to:

- (A) ...
- (B) ...
- (C) present rejected claims in better form for consideration on appeal; or
- (D) amend the specification or claims upon a showing good an sufficient reasons why the amendment is necessary and was not earlier presented. See 37 C.F.R. 41.33.

MPEP 1206

Claims 14, 20, 28, and 29 are amended; as a result, claims 1, 3-6, 8-12, 14-18 and 20-29 are now pending in this application.

Claims 14, 20, 28 and 29 were amended to correct an improper antecedent basis.

Appellant respectfully requests entry of the amendments to present the claims 14 and 28 in better form for consideration on appeal as allowed under MPEP 1206 I. C.

Claims 20 and 29 were further amended to identify the data item as not user-classifiable under the first category structure and as user-classifiable under the second category structure. The amendment is necessary to correctly claim the disclosed invention (e.g., see Figure 8 and supporting text). The amendment was not earlier presented because the claim language at issue was introduced in a prior amendment and subsequently identified while preparing the initial Appeal Brief.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Appellant respectfully submits that the claims are in condition for appeal. The Examiner is invited to telephone Appellant's attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,
JOSEPH SEAMON
By his Representatives,

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Date October 12, 2007

By Mark R. Vatuone
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CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12 day of October 2007.

Name Pete R. Lafferty

Signature Pete R. Lafferty